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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOSE GOMEZ; on behalf of himself, and on
behalf of all persons similarly situated,

Plaintiff,

vs.

ENTERPRISE RENT-A-CAR COMPANY
OF LOS ANGELES, LLC,

Defendants.

CASE No. '10CV2373 L AJB

**CLASS AND COLLECTIVE ACTION
COMPLAINT FOR DAMAGES,
RESTITUTION, AND INJUNCTIVE
RELIEF:**

(1) UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE § 17200 ET SEQ.;

(2) FAILURE TO PAY STRAIGHT
TIME AND OVERTIME WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 204,
210, 218, 510, 1194 & 1198;

(3) FAILURE TO PROVIDE
ACCURATE ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;

(4) FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED EXPENSES
IN VIOLATION OF CAL. LAB. CODE §
2802; and,

(5) FAILURE TO PAY OVERTIME
COMPENSATION IN VIOLATION OF 29
U.S.C. §§ 201 ET SEQ.

DEMAND FOR A JURY TRIAL

1 Plaintiff Jose Gomez, an individual, alleges upon information and belief, except for his own acts
2 and knowledge which are alleged based upon personal knowledge, the following:

3
4 **NATURE OF THE ACTION**

5 1. ENTERPRISE RENT-A-CAR COMPANY OF LOS ANGELES, LLC
6 (“ENTERPRISE”) is a Delaware company with headquarters in Saint Louis, Missouri. ENTERPRISE
7 is part of the largest car rental and vehicle leasing service in the United States providing fleet
8 management, used car sales, vanpool, and commercial truck rental services. Additionally, the company
9 offers personal accident insurance, supplemental liability protection, and personal effects protection
10 services. To assist in maintaining superior operations management at all locations throughout
11 California, ENTERPRISE retains Management Assistants and Management Trainees. During the
12 CLASS PERIOD, ENTERPRISE systematically failed to record and pay Plaintiff Jose Gomez
13 (“PLAINTIFF”) and other Management Assistants and Management Trainees (“Assistants and
14 Trainees”) for the actual number of hours worked, including straight time and overtime. ENTERPRISE
15 intentionally and unlawfully failed to pay the Assistants and Trainees for all straight time and overtime
16 with respect to time worked off the clock and on-the-job training. ENTERPRISE’s management
17 fictitiously classifies on-the-job training as part of their “Interview” process whereby ENTERPRISE
18 required these employees to submit to unpaid “working interviews.” However, these employees were
19 actually engaged in employment training which is compensable work under California law. The time
20 worked by the employees which was spent training for DEFENDANT’s benefit renders the training
21 ineligible for exemption from being considered hours worked. Therefore, the training is considered
22 work, and must be compensated. In addition, DEFENDANT failed to compensate these employees for
23 time worked off the clock reporting to other locations to pick up and drop off DEFENDANT’s cars in
24 accordance with DEFENDANT’s uniform policies and practices. ENTERPRISE’s policy and practice
25 to not pay employees for all work time, including overtime is evidenced by DEFENDANT’s business
26 records. Throughout the CLASS PERIOD, ENTERPRISE also engaged in a common course of
27 conduct in violation of California law by denying and interrupting mandatory meal and rest breaks
28 without additional compensation, as well as by refusing and failing to indemnify Assistants and

1 to September 2010. Throughout his entire employment, PLAINTIFF was classified as non-exempt and
2 paid on an hourly basis.

3 4 THE CLASS & CONDUCT

5 6. The PLAINTIFF brings this Action against ENTERPRISE on behalf of himself and a
6 class consisting of all individuals who currently work or previously worked for ENTERPRISE as a
7 Management Assistant and/or Management Trainee at a location in California ("CLASS" or "Class
8 Members") during the CLASS PERIOD as defined herein. The applicable "CLASS PERIOD" is
9 defined as the period beginning on the date four (4) years prior to the filing of this Complaint and
10 ending on a date as determined by the Court.

11 7. During the CLASS PERIOD, ENTERPRISE systematically failed to correctly pay the
12 PLAINTIFF and the Class Members for all hours worked including straight time and overtime. It is
13 ENTERPRISE's uniform policy and practice to classify the on-the-job training process as part of their
14 "Interview" process whereby ENTERPRISE fails to pay wages due PLAINTIFF and the Class
15 Members for time spent in employment training. As a result, the Class Members did not receive any
16 compensation for the time spent shadowing ENTERPRISE's employees in order to learn
17 ENTERPRISE's business operations. In addition, DEFENDANT failed to compensate these employees
18 for time worked off the clock reporting to other locations to pick up and drop off DEFENDANT's cars
19 in accordance with DEFENDANT's uniform policies and practices. Class Members are regularly
20 required to travel to other locations as instructed by DEFENDANT, however, DEFENDANT fails to
21 properly compensate Class Members for this work and travel. ENTERPRISE also exercises a uniform
22 practice of denying the Class Members mandatory thirty (30) minute meal breaks when the office
23 provides the Class Members with lunch. This practice is the direct result of an excessive workload
24 whereby the Class Members are instructed to clock out for a thirty (30) minute break, eat on the job,
25 and are not paid for the meal break. ENTERPRISE further denies the Class Members mandatory ten
26 (10) minute rest periods. ENTERPRISE also fails to reimburse the Class Members for all necessary
27 expenses incurred in the discharge of their job duties, including the personal vehicle usage and the
28 expense of gas that is required in order to travel to and from the training hub cities to participate in a

1 mandatory training program after being hired and to travel to locations required by DEFENDANT to
2 pick up DEFENDANT's cars.

3 8. Throughout the CLASS PERIOD, in violation of the applicable sections of the
4 California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage
5 Order, ENTERPRISE as a matter of corporate policy, practice and procedure, intentionally, knowingly
6 and systematically failed to properly record and compensate the PLAINTIFF and the Class Members
7 for all hours worked, by failing to record and pay Class Members for straight time and overtime hours
8 worked. During the CLASS PERIOD, ENTERPRISE required the Class Members to submit to unpaid
9 "working interviews" in accordance with their uniform policy and practice to not pay wages for
10 employment training. ENTERPRISE also engaged in a common course of denying compensation to
11 employees for time worked off the clock where by ENTERPRISE required employees to report to other
12 locations to pick up and drop off DEFENDANT's cars which were necessary in order to conduct
13 business. During the CLASS PERIOD, ENTERPRISE also denied and interrupted mandatory meal and
14 rest breaks without additional compensation, as well as refused and failed to indemnify Assistants and
15 Trainees for necessary expenses incurred in the discharge of their job duties. These uniform policies
16 and systematic practices of ENTERPRISE were intended to purposefully avoid the payment of wages
17 and other benefits required by California law which allows ENTERPRISE to illegally profit and gain
18 an unfair advantage over competitors. To the extent equitable tolling operates to toll claims by the
19 CLASS against ENTERPRISE, the CLASS PERIOD should be adjusted accordingly.

20 9. All Assistants and Trainees working for ENTERPRISE in California are similarly
21 situated in that they are all subject to ENTERPRISE's uniform policy and systematic practice that
22 requires them to perform work without compensation, miss meal and rest breaks and incur expenses
23 without proper reimbursement, as required by law. Assistants and Trainees are responsible for writing
24 car "rental tickets"; picking up rental car customers; making reservations to meet with rental car
25 customers; selling customer options and explaining rental policies; handling telephone and walk-in
26 rental customers; arranging for billing and length of car rentals; handling cash deposits; taking credit
27 information and obtaining approvals; verifying customers' return dates; checking in rental cars when
28 returned; settling customer complaints; making limited sales calls; and arranging for and assisting with

1 fleet maintenance. In addition, all Assistants and Trainees share a common chain of command in that
2 they all report to a Branch Manager according to DEFENDANT's uniform, rigid reporting protocols.

3 10. DEFENDANT has the legal burden to establish that each and every employee is
4 compensated for all hours worked, provided an adequate meal and rest periods and is fully reimbursed
5 for the expenses incurred in the discharge of their job duties. DEFENDANT, however, as a matter of
6 uniform and systematic policy, practice and procedure failed and still fails to pay during the CLASS
7 PERIOD all wages due PLAINTIFF and the Class Members for all hours worked including straight
8 time and overtime, provide all mandatory meal and rest periods, and reimburse the PLAINTIFF and
9 the Class Members for all necessary expenses incurred in the discharge of their job duties. Rather than
10 satisfying its burden, the DEFENDANT's uniform policy and practice in place at all times during the
11 CLASS PERIOD and currently in place is to systematically not pay the PLAINTIFF and the Class
12 Members for all hours worked, including those hours spent training, including overtime pay for more
13 than forty (40) hours in a seven (7) day workweek, or eight (8) hours in a workday, not provide
14 uninterrupted off duty thirty (30) minute meal breaks and ten (10) minute rest breaks, and not
15 indemnify the Class Members for expenses incurred in the discharge of their job duties. This
16 systematic and company-wide policy originating at the corporate level is the cause of the illegal pay
17 practices as described herein. This common business applicable to each and every Class Member can
18 be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under the California Business
19 & Professions Code, Sections 17200 et seq., as causation, damages, and reliance are not elements of
20 this claim.

21 11. At no time before, during or after the PLAINTIFF's employment with DEFENDANT,
22 was the compensation for any member of the CLASS properly recalculated so as to compensate the
23 employee for all hours worked as required by California Labor Code Sections 204 and 510, et seq.

24 12. During the CLASS PERIOD, ENTERPRISE uniformly violated the rights of the
25 Class Members under California law, without limitation, in the following manners:

- 26 (a) Violating California Code of Regulations, Title 8, Section 11040(7) and Labor
27 Code Section 206.5 by failing to record and pay PLAINTIFF and the Class
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Members all wages due for all hours worked, including straight time and overtime;

(b) Violating California Labor Code Sections 204, 510 and 1198 by failing to pay regular and premium wages for hours worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek;

(c) Violating Cal. Lab. Code § 2802, by failing to provide PLAINTIFF and the Class Members with reimbursement of expenses incurred by these employees in the discharge of their duties as an employee of DEFENDANT;

(d) Violating Business & Processions Code Section 17200, *et seq.*, by failing to provide PLAINTIFF and the Class Members with legally required meal periods and rest periods and by failing to pay wages to such employees for the meal periods and rest periods that were not provided;

(e) Violating California Labor Code Section 226 by failing to provide the members of the CLASS with accurate itemized wage statements;

(f) Violating California Labor Code Sections 201 and 202 by failing to tender full payment and/or restitution of wages owed to the employees whose employment with DEFENDANT has terminated; and,

(g) Violating Business & Processions Code Section 17200, *et seq.*, by committing acts of unfair competition in violation of the California Labor Code and public policy, by failing to record and pay PLAINTIFF and the Class Members wages for all hours of work.

13. As a result of ENTERPRISE's uniform policies, practices and procedures, there are numerous questions of law and fact common to all Class Members who work for ENTERPRISE in California during the CLASS PERIOD. These questions include, but are not limited to, the following:

(a) Whether ENTERPRISE's policies, practices and pattern of conduct described in this Complaint were and are unlawful;

- 1 (b) Whether ENTERPRISE has engaged in a common course of failing to record
2 and pay PLAINTIFF and the members of the CLASS for all hours worked,
3 including off the clock, straight time and overtime;
- 4 (c) Whether ENTERPRISE has engaged in a common course of requiring or
5 permitting its Assistants and Trainees to work off the clock without
6 compensation;
- 7 (d) Whether ENTERPRISE has engaged in a common course of requiring or
8 permitting its Assistants and Trainees to not report all hours worked;
- 9 (e) Whether ENTERPRISE has engaged in a common course of failing to maintain
10 true and accurate time records for all hours worked by its Assistants and
11 Trainees;
- 12 (f) Whether ENTERPRISE has engaged in a common course of failing to provide
13 Assistants and Trainees with accurate itemized wage statements;
- 14 (g) Whether ENTERPRISE has engaged in a common course of failing to provide
15 its Assistants and Trainees with required rest breaks;
- 16 (h) Whether ENTERPRISE has engaged in a common course of failing to provide
17 its Assistants and Trainees with uninterrupted off duty meal breaks;
- 18 (i) Whether ENTERPRISE has engaged in a common course of failing to pay all
19 its Assistants and Trainees all wages due upon termination;
- 20 (j) Whether ENTERPRISE has engaged in a common course of failing to
21 indemnify its Assistants and Trainees for all necessary expenses incurred in the
22 discharge of their duties;
- 23 (k) Whether ENTERPRISE has engaged in unfair competition by the above-listed
24 conduct; and,
- 25 (l) Whether ENTERPRISE's conduct was willful.

26 14. This Class Action meets the statutory prerequisites for the maintenance of a Class
27 Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 28 (a) The persons who comprise the CLASS exceed 100 persons and are therefore so

1 numerous that the joinder of all such persons is impracticable and the
2 disposition of their claims as a class will benefit the parties and the Court;

3 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
4 are
5 raised in this Complaint are common to the CLASS will apply uniformly to
6 every member of the CLASS;

7 (c) The claims of the representative PLAINTIFF are typical of the claims of each
8 Class Member. PLAINTIFF, like all Class Members, was subjected to
9 DEFENDANT's uniform policy and practice which failed to pay all wages due
10 the CLASS for all hours worked, including straight time and overtime, failed to
11 provide the Class Members with uninterrupted meal and rest breaks, failed to
12 indemnify the Class Members for necessary expenses, and failed to accurately
13 record all hours worked by the CLASS. PLAINTIFF sustained economic injury
14 as a result of DEFENDANT's unlawful employment practices. PLAINTIFF
15 and the Class Members were and are similarly or identically harmed by the same
16 unlawful, deceptive, unfair and pervasive pattern of misconduct engaged in by
17 DEFENDANT; and,

18 (d) The representative PLAINTIFF will fairly and adequately represent and protect
19 the interest of the CLASS, and has retained counsel who are competent and
20 experienced in class action litigation. There are no material conflicts between
21 the claims of the representative PLAINTIFF and Class Members that would
22 make class certification inappropriate. Counsel for the CLASS will vigorously
23 assert the claims of all members of the CLASS.

24 15. In addition to meeting the statutory prerequisites to a Class Action, this action is
25 properly maintained as a Class ction pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

26 (a) Without class certification and determination of declaratory, injunctive,
27 statutory
28 and other legal questions within the class format, prosecution of separate actions

by individual members of the CLASS will create the risk of:

- (i) Inconsistent or varying adjudications with respect to individual members of the CLASS which would establish incompatible standards of conduct for the parties opposing the CLASS; and/or,
- (ii) Adjudication with respect to individual members of the CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests;

(b) The parties opposing the CLASS have acted or refused to act on grounds generally applicable to the CLASS, making appropriate class-wide relief with respect to the CLASS as a whole in that the DEFENDANT uniformly failed to pay all wages due for all hours worked by the Class Members;

- (i) With respect to the First Cause of Action, the final relief on behalf of the CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seek declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- (i) The interests of the members of the CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual Class

Members when compared to the substantial expense and burden of individual prosecution of this litigation;

(ii) Class certification will obviate the need for unduly duplicative litigation that would create the risk of: (a) Inconsistent or varying adjudications with respect to individual members of the CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or, (b) Adjudications with respect to individual members of the CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

(iii) In the context of wage litigation because a substantial number of individual CLASS members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the class action is the only means to assert their claims through a representative; and,

(iv) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

16. This Court should permit this action to be maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

(a) The questions of law and fact common to the CLASS predominate over any question affecting only individual members because the DEFENDANT's employment practices were uniformly and systematically applied with respect to the entire CLASS;

(b) A class action is superior to any other available method for the fair and efficient

1 adjudication of the claims of the members of the CLASS because in the context
2 of employment litigation a substantial number of individual CLASS members
3 will avoid asserting their rights individually out of fear of retaliation or adverse
4 impact on their employment;

5 (c) The members of the CLASS exceed 100 people and are therefore so numerous
6 that it is impractical to bring all members of the CLASS before the Court;

7 (d) PLAINTIFF, and the other CLASS members, will not be able to obtain effective
8

9 and economic legal redress unless the action is maintained as a class action;

10 (e) There is a community of interest in obtaining appropriate legal and equitable
11 relief for the acts of unfair competition, statutory violations and other
12 improprieties, and in obtaining adequate compensation for the damages and
13 injuries which DEFENDANT's actions have inflicted upon the CLASS;

14 (f) There is a community of interest in ensuring that the combined assets of
15 DEFENDANT are sufficient to adequately compensate the members of the
16 CLASS for the injuries sustained;

17 (g) DEFENDANT has acted or refused to act on grounds generally applicable to the
18

19 CLASS, thereby making final class-wide relief appropriate with respect to the
20 CLASS as a whole;

21 (h) The members of the CLASS are readily ascertainable from the business records
22 of DEFENDANT and business records of the DEFENDANT will identify and
23 establish membership in the CLASS; and,

24 (i) Class treatment provides manageable judicial treatment calculated to bring a
25 efficient and rapid conclusion to all litigation of all wage and hour related
26 claims arising out of the conduct of DEFENDANT as to the members of the
27 CLASS.

28 17. ENTERPRISE maintains records from which the Court can ascertain and identify by

1 job title each of the Assistants and Trainees who have been systematically, intentionally and uniformly
2 subjected to DEFENDANT's unlawful corporate policy, practices and procedures as herein alleged.
3 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of similarly
4 situated employees when such employees have been identified.

5
6 **JURISDICTION AND VENUE**

7 18. This Court has jurisdiction over the PLAINTIFF's federal claim pursuant to 28
8 U.S.C. § 1331 and supplemental jurisdiction of the PLAINTIFF's related state law claims pursuant to
9 28 U.S.C. § 1367.

10 19. Further, with respect to the state law class claims, these state law class claims
11 are brought as a Class Action pursuant to Fed. R. Civ. Proc, Rule 23 on behalf of a class that
12 exceeds 100 persons, that involves more than \$5,000,000 in controversy, and where the citizenship
13 of Plaintiff and the members of the Class are diverse from that of DEFENDANT. As a result, this
14 Court also has original jurisdiction over the state law class claims under 28 U.S.C. § 1332 (CAFA
15 Jurisdiction).

16 20. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because: (i)
17 DEFENDANT is subject to personal jurisdiction in this District and therefore resides in this
18 District; (ii) DEFENDANT maintains offices or facilities in San Diego County, California; (iii)
19 DEFENDANT committed the wrongful conduct against the PLAINTIFF and the Class Members in
20 San Diego County, California; (iv) the PLAINTIFF resides in San Diego County; and (v) the
21 PLAINTIFF was employed by DEFENDANT in San Diego County, California.

22
23 **FIRST CAUSE OF ACTION**

24 **For Unlawful Business Practices**

25 **[Cal. Bus. And Prof. Code § 17200, et seq.]**

26 **(By PLAINTIFF and the CLASS and against All Defendants)**

27 21. PLAINTIFF, and the Class Members, reallege and incorporate by this reference, as
28

1 though fully set forth herein, paragraphs 1 through 20 of this Complaint.

2 22. DEFENDANT is a “persons” as that term is defined under the California Business and
3 Professions Code, Section 17021.

4 23. Cal. Bus. & Prof. Code Section 17200 defines unfair competition as any unlawful,
5 unfair, or fraudulent business act or practice. Section 17200 applies to violations of labor laws in the
6 employment context. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief
7 with respect to unfair competition as follows:

8 Any person who engages, has engaged, or proposes to engage in unfair competition may
9 be enjoined in any court of competent jurisdiction. The court may make such orders or
10 judgments, including the appointment of a receiver, as may be necessary to prevent the
11 use or employment by any person of any practice which constitutes unfair competition,
as defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition.

12 Cal. Bus. & Prof. Code § 17203.

13 24. At all times relevant hereto, by and through the conduct described herein,
14 DEFENDANT engaged in unfair and unlawful practices in violation of the California Business and
15 Profession Code, Section 17200 et seq. by failing to: (a) pay PLAINTIFF and the Class Members the
16 wages due for all hours worked; (b) accurately record all hours worked; (c) provide mandatory meal
17 and rest breaks without compensation; and (d) indemnify employees for expenses incurred in the
18 performance of job duties for DEFENDANT’s benefit. DEFENDANT’s unlawful and deceptive
19 conduct deprived the PLAINTIFF and the Class Members of fundamental rights and privileges and
20 caused them economic injury as herein alleged. DEFENDANT engaged in unfair competition by
21 withholding compensation for all hours worked. DEFENDANT further engaged in unfair and unlawful
22 business practices by failing to keep accurate information and time records and failing to accurately
23 itemize the total hours worked by DEFENDANT’s employees, in violation of California law. As
24 herein alleged, DEFENDANT’s conduct was unlawful in that, with respect to all Assistants and
25 Trainees, DEFENDANT uniformly violated California law and regulations, including but not limited
26 to the California Labor Code, Sections 201, 202, 206.5, 216, 204, 218, 226, 226.7, 510, 512, 1102.5,
27 1174, 1175, 1198, 2802, and the California Code of Regulations, Title 8, Section 11040(7). Because
28 DEFENDANT ordered and requires these employees to submit time records which the DEFENDANT

1 knows to be false because the time records exclude all hours worked, DEFENDANT's pattern of
2 conduct and systematic practices violate the California Labor Code, Section 206.5.

3 25. Throughout the CLASS PERIOD, it was also DEFENDANT's uniform policy and
4 practice to interrupt the meal and rest breaks of the PLAINTIFF and the members of the CLASS.
5 DEFENDANT's uniform practice denies the PLAINTIFF and the Class Members mandatory thirty
6 (30) minute meal breaks when the office provides the Class Members with lunch. This practice is the
7 direct result of an excessive workload whereby the Class Members are instructed to clock out for a
8 thirty (30) minute break, eat on the job, and are not paid for the meal break. As a result, the
9 PLAINTIFF and the Class Members were required to work off the clock, without pay, during times that
10 they should have been on their meal and rest breaks. At all relevant times during the CLASS PERIOD,
11 DEFENDANT failed to provide any compensated work time for interrupting such breaks.

12 26. By and through the unfair and unlawful business practices described herein,
13 DEFENDANT obtained valuable property, money, and services from the PLAINTIFF, and the Class
14 Members, and has deprived them of valuable rights and benefits guaranteed by law and contract, all
15 to the detriment of the employees and to the benefit of DEFENDANT so as to allow DEFENDANT
16 to unfairly compete against competitors who comply with the law.

17 27. All the acts described herein as violations of, among other things, the California Labor
18 Code and Industrial Welfare Commission Wage Order, are unlawful and in violation of public policy;
19 and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair and
20 unlawful business practices in violation of the California Business and Professions Code, Section
21 17200 et seq. DEFENDANT's conduct was also deceptive in that DEFENDANT represented to
22 PLAINTIFF and the Class Members that they were not entitled to report, record and receive
23 compensation for all hours worked.

24 28. PLAINTIFF, and the Class Members, are entitled to, and do, seek such relief as may be
25 necessary to restore to them the money and property which DEFENDANT have acquired, or of which
26 PLAINTIFF, and the members of the CLASS, have been deprived, by means of the above described
27 unfair and unlawful business practices.

28 29. PLAINTIFF, and the Class Members, are further entitled to, and do, seek a

1 declaration that the above described business practices are unfair and unlawful and seek injunctive
2 relief to enjoin DEFENDANT from engaging in any of these unfair and unlawful business practices
3 in the future.

4 30. PLAINTIFF, and the Class Members, have no plain, speedy, and/or adequate remedy
5 at law that will end the unfair and unlawful business practices of DEFENDANT. As a result of the
6 unfair and unlawful business practices described above, PLAINTIFF, and the members of the CLASS,
7 have suffered and will continue to suffer irreparable harm unless DEFENDANT is restrained from
8 continuing to engage in these unfair and unlawful business practices. In addition, DEFENDANT
9 should be required to disgorge the unpaid wages to PLAINTIFF, and the members of the CLASS.

11 **SECOND CAUSE OF ACTION**

12 **For Failure To Pay Straight Time and Overtime Wages**

13 **[Cal. Lab. Code §§ 204, 210, 218, 510, 1194 & 1198]**

14 **(By PLAINTIFF and the CLASS and Against all Defendants)**

15 31. PLAINTIFF, and the Class Members, reallege and incorporate by this reference, as
16 though fully set forth herein, paragraphs 1 through 30 of this Complaint.

17 32. PLAINTIFF, and the Class Members, bring a claim for DEFENDANT's willful and
18 intentional violations of the California Labor Code, Sections 204, 210, 510, 515, 558, 1194, and
19 California Industrial Wage Order No. 4 (8 C.C.R. § 11040, as amended throughout the CLASS
20 PERIOD) for DEFENDANT's failure to pay them for all hours worked, including hours in excess of
21 eight (8) per workday, forty (40) per workweek, and on seven (7) consecutive days.

22 33. Pursuant to the California Labor Code, other applicable laws and regulations, and public
23 policy an employer must pay its employees for all hours worked. Cal. Lab. Code § 204.

24 34. California Labor Code Section 510 further provides that employees in California shall
25 not be employed more than eight (8) hours in any workday, forty (40) hours in a workweek, and on
26 seven (7) consecutive days unless they receive additional compensation beyond their regular wages in
27 amounts specified by law.

28 35. California Labor Code Section 1194 establishes an employee's right to recover unpaid

1 wages, including overtime compensation and interest thereon, together with the costs of suit. California
2 Labor Code Section 1198 states that the employment of an employee for longer hours than those fixed
3 by the Industrial Welfare Commission is unlawful.

4 36. During the CLASS PERIOD, ENTERPRISE maintained a uniform practice of paying
5 PLAINTIFF, and the Class Members, without regard to the number of hours actually worked. As set
6 forth herein, DEFENDANT's policy and practice was to intentionally and uniformly deny payment of
7 wages due for hours worked, including hours worked off the clock, straight time and overtime,
8 specifically, the employment training time. DEFENDANT's uniform pattern of unlawful wage and
9 hour practices manifested, without limitation, in the following respects applicable to the CLASS as a
10 whole:

- 11 (a) Not compensating Assistants and Trainees for all hours worked; and,
- 12 (b) Requiring Assistants and Trainees to work off the clock, straight time and
13 overtime, during employment training, reporting to other locations, as well as
14 during unpaid meal and rest breaks, without pay on a systematic and daily basis.

15 37. In committing these violations of the Labor Code, ENTERPRISE required PLAINTIFF
16 and the Class Members to inaccurately under-report the amount of time worked and ENTERPRISE
17 underpaid the actual amount of hours worked. ENTERPRISE acted in an illegal attempt to avoid
18 payment of earned wages, overtime compensation and other benefits in violation of the California
19 Labor Code and Industrial Welfare Commission requirements.

20 38. California Labor Code Section 515 sets out various categories of employees who are
21 exempt from the overtime requirements of the law. None of these exemptions are applicable to
22 PLAINTIFF and the Class Members. During the CLASS PERIOD, PLAINTIFF, and the Class
23 Members, were paid on an hourly basis and/or classified as non-exempt by DEFENDANT.

24 39. During the CLASS PERIOD, the PLAINTIFF, and the Class Members, worked
25 more hours than they were paid for, constituting a failure to pay all earned wages.

26 40. DEFENDANT failed to pay PLAINTIFF, and the Class Members, wages for all the
27 hours they have actually worked, including hours in excess of the maximum hours permissible by law
28 as required by the California Labor Code, Sections 510 and 1198, even though PLAINTIFF and the

1 Class Members were required to work, and did in fact work, off the clock.

2 41. By virtue of DEFENDANT's unlawful failure to pay additional compensation to the
3 PLAINTIFF, and the Class Members, for the number of hours actually worked, the PLAINTIFF, and
4 the Class Members, have suffered, and will continue to suffer, an economic injury in amounts which
5 are presently unknown to them and which will be ascertained according to proof at trial.

6 42. During the CLASS PERIOD, DEFENDANT knew or should have known that
7 PLAINTIFF, and the Class Members, worked hours that they were never compensated for at either the
8 straight time and/or overtime rate of pay.

9 43. In performing the acts and practices herein alleged in violation of labor laws and
10 refusing to compensate employees for all hours worked and provide the requisite overtime
11 compensation, the DEFENDANT acted and continues to act intentionally, oppressively, and
12 maliciously toward the PLAINTIFF, and toward the Class Members, with a conscious and utter
13 disregard of their legal rights, or the consequences to them, and with the despicable intent of depriving
14 them of their property and legal rights and otherwise causing them injury in order to increase corporate
15 profits at the expense of PLAINTIFF and the Class Members.

16 44. PLAINTIFF, and the Class Members, request recovery of wages due and applicable
17 straight time and overtime compensation according to proof, interest, and costs, as well as the
18 assessment of any and all available statutory penalties against DEFENDANT, in a sum as provided by
19 the Labor Code and/or other statutes.

20 45. ENTERPRISE's respective failure to pay the correct amount of straight-time hourly
21 wages permits a civil suit to recover wages due to the PLAINTIFF, and all the Class Members, under
22 California Labor Code Sections 204 and 218, as well as recovery of interest.

23 46. ENTERPRISE's failure to pay the correct amount of overtime violates IWC Wage
24 Order No. 4 (8 C.C.R. § 11040, as amended during the CLASS PERIOD), and California Labor Code
25 Sections 204, 210, 218, 510, 1194 and 1198, and is therefore unlawful.

26 47. Therefore, PLAINTIFF, and the Class Members, request recovery of straight time
27 and overtime compensation according to proof, interest, statutory costs, as well as the assessment of
28 any statutory penalties against DEFENDANT, in a sum as provided by the Cal. Lab. Code and/or other

1 statutes. To the extent straight time and overtime compensation is determined to be owed to
 2 PLAINTIFF and other Class Members whose employment has been terminated, these employees would
 3 also be entitled to waiting time penalties under Section 203 of the California Labor Code. Further,
 4 PLAINTIFF, and the Class Members, are entitled to seek and recover statutory costs.

5 **THIRD CAUSE OF ACTION**

6 **For Failure to Provide Accurate Itemized Statements**

7 **[Cal. Lab. Code § 226]**

8 **(By PLAINTIFF and the CLASS and against DEFENDANT)**

9
 10 48. PLAINTIFF, and the Class Members, reallege and incorporate by this reference, as
 11 though fully set forth herein, paragraphs 1 through 47 of this Complaint.

12 49. Cal. Labor Code Section 226 provides that an employer must furnish employees with
 13 “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
 14 the employee, (3) the number of piece rate units earned and any applicable piece rate if the employee
 15 is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
 16 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
 17 of the period for which the employee is paid, (7) the name of the employee and his or her social
 18 security number, except that by January 1, 2008, only the last four digits of his or her social security
 19 number or an employee identification number other than a social security number may be shown on
 20 the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all
 21 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
 22 at each hourly rate by the employee.”

23 50. At all times relevant herein, DEFENDANT violated Labor Code Section 226 with
 24 respect to PLAINTIFF and the Class Members, without limitation, in that DEFENDANT inaccurately
 25 or completely failed to record and report: (a) All hours actually worked on their pay stubs, including
 26 straight-time and overtime, and (b) time worked off the clock.

27 51. This failure by DEFENDANT was the result of DEFENDANT’s intentional refusal to
 28 institute a system for accurately recording hours worked and DEFENDANT’s orders and instructions

1 to the members of the CLASS to exclude all hours worked, including straight time, overtime and off
2 the clock. DEFENDANT also fails to provide members of the CLASS with accurate wage statements
3 in writing and fails to make wage statements available to these employees upon demand.

4 52. DEFENDANT knowingly and intentionally failed to comply with California Labor
5 Code Section 226, causing damages to PLAINTIFF, and the Class Members. These damages include,
6 but are not limited to, unpaid wages for hours actually worked, the costs expended calculating the true
7 hours worked and the amount of employment taxes which were not properly paid to state and federal
8 tax authorities. These damages may be difficult to estimate. Therefore, PLAINTIFF, and the Class
9 Members, may recover liquidated damages of \$50.00 for the initial pay period in which the violation
10 occurred, and \$100.00 for each violation in subsequent pay period pursuant to California Labor Code
11 Section 226, in an amount according to proof at the time of trial (but in no event more than \$4,000.00
12 for PLAINTIFF and each respective member of the CLASS herein), plus costs, pursuant to California
13 Labor Code Section 226(g).

14
15 **FOURTH CAUSE OF ACTION**

16 **For Failure to Reimburse Employees for Necessary Expenses**

17 **[Cal. Lab. Code § 2802]**

18 **(By PLAINTIFF and the CLASS and Against All Defendants)**

19 53. PLAINTIFF, and the Class Members, reallege and incorporate by this reference, as
20 though fully set forth herein, paragraphs 1 through 52 of this Complaint.

21 54. Pursuant to California Labor Code Section 2802, DEFENDANT is required to
22 reimburse PLAINTIFF, and the Class Members, for expenses incurred by them in the performance of
23 their job duties (which may include but is not limited to the following expenses: vehicles usage,
24 mileage, gas, and meals).

25 55. During the CLASS PERIOD, DEFENDANT had a uniform policy and procedure
26 whereby PLAINTIFF and the Class Members were required to personally incur and pay for expenses
27 during the performance of their employment duties, all without reimbursement from DEFENDANT.
28 Similarly, DEFENDANT did not reimburse PLAINTIFF and the Class Members for other business

1 expenses incurred as a condition of and in the discharge of their employment duties.

2 56. At all relevant times, PLAINTIFF and the Class Members paid for the expense of gas
3 that was required in order to travel to and from the training hub cities to participate in a mandatory
4 training program after being hired, which was for the DEFENDANT's benefit, and which was so that
5 DEFENDANT could prepare these new employees for immediate work. In addition, DEFENDANT
6 failed to reimburse PLAINTIFF and the Class Members for the expenses incurred when they are
7 required to travel to locations in their personal vehicle which are not the employee's regular location,
8 such as when the employees are required to drive to more distant locations to pick up cars to bring to
9 their regular location, as directed by DEFENDANT. DEFENDANT's uniform practice was to not
10 indemnify these employees for such expenses.

11 57. DEFENDANT did not reimburse PLAINTIFF and the Class Members for the cost and
12 use of their personal vehicles within the course and scope of their employment, such as to report to
13 DEFENDANT's training hub locations to participate in a mandatory training program that was required
14 after being hired.

15 58. As a proximate result of the aforementioned violations, PLAINTIFF and the Class
16 Members have been damaged in an amount according to proof at the time of trial.

17 59. DEFENDANT's pattern, practice and uniform administration of corporate policy
18 regarding failure to reimburse business expenses as described herein is unlawful and creates an
19 entitlement. Pursuant to Labor Code Section 2802, PLAINTIFF and the Class Members are entitled
20 to recover from DEFENDANT the full amount of the expenses they incurred in the course of their job
21 duties, plus interest, and costs of suit.

22
23 **FIFTH CAUSE OF ACTION**

24 **Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. ("FLSA")**

25 **(By PLAINTIFF and the COLLECTIVE CLASS against DEFENDANT)**

26 60. PLAINTIFF, and the other members of the COLLECTIVE CLASS, reallege and
27 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 59 of this
28 Complaint.

1 61. DEFENDANT is engaged in communication, business, and transmission between
2 the states, and is, therefore, engaged in commerce within the meaning of 29 U.S.C. § 203(b).

3 62. The PLAINTIFF further brings the Fifth cause of action on behalf of a Collective
4 Class which consists of all Management Assistants and/or Management Trainees employed in the
5 United States by DEFENDANT during the period three (3) years prior to the filing of the complaint
6 and ending on the date as determined by the Court, and who performed work in excess of forty (40)
7 hours in one week (the "COLLECTIVE CLASS").

8 63. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful
9 violations of the FLSA.

10 64. 29 U.S.C. § 207(a)(1) provides in pertinent part:

11 Except as otherwise provided in this section, no employer shall employ any of his
12 employees who in any workweek is engaged in commerce or in the production of goods
13 for commerce, or is employed in an enterprise engaged in commerce or in the
14 production of goods for commerce, for a workweek longer than forty hours unless such
employee receives compensation for his employment in excess of the hours above
specified at a rate not less than one and one-half times the regular rate at which he is
employed.

15 65. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does
16 not apply to:

17 any employee employed in a bona fide executive, administrative, or professional
18 capacity (including any employee employed in the capacity of academic administrative
19 personnel or teacher in elementary or secondary schools), or in the capacity of outside
20 salesman (as such terms are defined and delimited from time to time by regulations of
the Secretary, subject to the provisions of the Administrative Procedure Act [5 USCS
§§ 551 et seq.] except [that] an employee of a retail or service establishment shall not
21 be excluded from the definition of employee employed in a bona fide executive or
22 administrative capacity because of the number of hours in his workweek which he
devotes to activities not directly or closely related to the performance of executive or
administrative activities, if less than 40 per centum of his hours worked in the
workweek are devoted to such activities).

23 66. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., the PLAINTIFF and
24 the other members of the COLLECTIVE CLASS are entitled to overtime compensation for all overtime
25 hours actually worked, at a rate not less than one and one-half times their regular rate of pay for all
26 hours worked in excess of forty (40) hours in any workweek.

27 67. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the exempt
28 status of an employee. The exempt or nonexempt status of any particular employee must be determined

1 on the basis of whether the employee's salary and duties meet the requirements of the regulations in
2 this part.

3 68. The exemptions of the FLSA as listed in section 13(a), and as explained by 29 C.F.R.
4 541.3, do not apply to the PLAINTIFF and the other members of the COLLECTIVE CLASS, because
5 their work consists of non-management, production line labor performed with skills and knowledge
6 acquired from on-the-job training, rather than from the prolonged course of specialized intellectual
7 instruction required for exempt learned professional employees such as medical doctors, architects and
8 archeologists. Assistants and Trainees either do not hold an advanced degree, have not taken any
9 prolonged course of specialization, and/or have attained the vast majority of the skills they use as
10 employees of DEFENDANT from on the job training.

11 69. For an employee to be exempt as a bona fide "executive," all the following criteria must
12 be met and DEFENDANT has the burden of proving that:

- 13 (a) The employee's primary duty must be management of the enterprise, or of a customarily
14 recognized department or subdivision;
- 15 (b) The employee must customarily and regularly direct the work of at least two (2) or more
16 other employees;
- 17 (c) The employee must have the authority to hire and fire, or to command particularly
18 serious attention to his or his recommendations on such actions affecting other
19 employees; and,
- 20 (d) The employee must be primarily engaged in duties which meet the test of exemption.

21 No member of the COLLECTIVE CLASS was or is an executive because they all fail to meet the
22 requirements of being an "executive" under section 13 of the FLSA and 29 C.F.R. 541.100.

23 70. For an employee to be exempt as a bona fide "administrator," all of the following
24 criteria must be met and DEFENDANT has the burden of proving that:

- 25 (a) The employee must perform office or non-manual work directly related to management
26 or general business operation of the employer or the employer's customers;
- 27 (b) The employee must customarily and regularly exercise discretion and independent
28 judgment with respect to matters of significance; and,

1 (c) The employee must regularly and directly assist a proprietor or an exempt
2 administrator; or,

3 (d) The employee must perform under only general supervision, work requiring special
4 training, experience, or knowledge; and,

5 (e) The employee must be primarily engaged in duties which meet the test of exemption.

6 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to meet the
7 requirements of for being an “administrator” under section 13(a) of the FLSA and 29 C.F.R. 541.300.

8 71. For an employee to be “exempt” as a bona fide “professional”, the DEFENDANT has
9 the burden of proving that the primary duty of the employee is the performance of work that:

10 (a) Requires knowledge of an advanced type in a field of science or learning customarily
11 acquired by a prolonged course of specialized intellectual instruction; or

12 (b) Requires invention, imagination, originality or talent in a recognized field of artistic or
13 creative endeavor.

14 No member of the COLLECTIVE CLASS was or is a professional because they all fail to meet the
15 requirements of being an “professional” within the meaning of 29 CFR 541.300.

16 72. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and other members of
17 the COLLECTIVE CLASS, worked more than forty (40) hours in a work week.

18 73. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and other members
19 of the COLLECTIVE CLASS, overtime compensation for the hours they have worked in excess of the
20 maximum hours permissible by law as required by section 207 of the FLSA, even though the
21 PLAINTIFF, and the other members of the COLLECTIVE CLASS, were regularly required to work,
22 and did in fact work, overtime hours.

23 74. For purposes of the Fair Labor Standards Act, the employment practices of
24 DEFENDANT were and are uniform throughout the United States in all respects material to the claims
25 asserted in this Complaint.

26 75. There are no other exemptions applicable to the PLAINTIFF and/or to members of the
27 COLLECTIVE CLASS.

28 76. As a result of DEFENDANT’S failure to pay overtime compensation for overtime hours

1 worked, as required by the FLSA, the PLAINTIFF and the members of the COLLECTIVE CLASS
2 were damaged in an amount to be proved at trial.

3 77. Therefore, the PLAINTIFF demands that he and the members of the COLLECTIVE
4 CLASS be paid overtime compensation as required by the FLSA for every hour of overtime worked
5 in any work week for which they were not compensated, plus interest and statutory costs as provided
6 by law.

7 **PRAYER**

8 WHEREFOR, PLAINTIFF prays for judgment against each Defendant, jointly and severally,
9 as follows:

10 1. On behalf of the CLASS:

- 11 A) That the Court certify action asserted by the CLASS as a class action pursuant to Fed.
12 R. Civ. Proc. 23(b)(2) and/or (3);
- 13 B) An order temporarily, preliminarily and permanently enjoining and restraining
14 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 15 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully withheld
16 from PLAINTIFF and the other members of the CLASS;
- 17 D) Disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the
18 sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other
19 members of the CLASS;
- 20 E) Compensatory damages, according to proof at trial, including compensatory damages
21 for both regular and overtime compensation wages due PLAINTIFF and the other
22 members of the CLASS, during the applicable CLASS PERIOD plus interest thereon
23 at the statutory rate;
- 24 F) One (1) hour of pay for each workday in which a meal period was not provided to
25 PLAINTIFF and each member of the CLASS for each five (5) hours of work;
- 26 G) One (1) hour of pay for each workday in which a rest period was not provided to
27 PLAINTIFF and each member of the CLASS as required by law;
- 28 H) The wages of all terminated employees due to members of the CLASS as a penalty from

the due date thereof at the same rate until paid or until an action therefor is commenced in accordance with Cal. Lab. Code § 203;

I) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violations of Cal. Lab. Code § 226; and,

J) The amount of the expenses PLAINTIFF and each member of the CLASS incurred in the course of their job duties, plus interest, and costs of suit;

2. On behalf of the COLLECTIVE CLASS:

A) That the Court certify the Fifth Cause of Action asserted by the COLLECTIVE CLASS as an opt-in collective class action under 29 U.S.C. § 216(b);

B) Issue a declaratory finding that Defendant's acts, policies, practices and procedures complained of herein violated provisions of the Fair Labor Standards Act;

C) That the PLAINTIFF and the other members of the COLLECTIVE CLASS recover compensatory damages and an equal amount of liquidated damages as provided under the law and in 29 U.S.C. § 216(b)

3. On all claims:

A) An award of interest, including prejudgment interest at the legal rate.

B) An award of penalties and cost of suit, but neither this prayer nor any other allegation or prayer in this Complaint is to be construed as a request, under any circumstance, that would result in a request for attorneys' fees under Cal. Lab. Code § 218.5;

C) Such other and further relief as the Court deems just and equitable.

Dated: November 17, 2010

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: November 17, 2010

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: /s/ Norman B. Blumenthal

Norman B. Blumenthal
Attorneys for Plaintiff